

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
AT LAW AND IN ADMIRALTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No.

APPROXIMATELY \$6,036.50 IN UNITED
STATES CURRENCY, and

APPROXIMATELY \$16,699.00 IN UNITED
STATES CURRENCY,

Defendants.

VERIFIED COMPLAINT FOR CIVIL FORFEITURE IN REM

The United States of America, by its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and Scott J. Campbell, Assistant United States Attorney for this district, alleges the following in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

Nature of the Action

1. This is a civil action to forfeit properties to the United States of America, under 21 U.S.C. § 881(a)(6), for violations of 21 U.S.C. § 841(a)(1).

The Defendants In Rem

2. The defendant property, approximately \$6,036.50 in United States currency, was seized on or about November 8, 2018, from Darius McElroy at or near South 24th Street and West Morgan Avenue, Milwaukee, Wisconsin.

3. The defendant property, approximately \$16,699.00 in United States currency, was seized on or about November 8, 2018, from Darius McElroy at 3XXX South 21st Street, Milwaukee, Wisconsin.

4. The defendant properties are presently in the custody of the High Intensity Drug Trafficking Area (HIDTA) in Milwaukee, Wisconsin.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a).

6. This Court has *in rem* jurisdiction over the defendant properties under 28 U.S.C. § 1355(b).

7. Venue is proper in this district under 28 U.S.C. § 1355(b)(1), because the acts or omissions giving rise to the forfeiture occurred in this district.

Basis for Forfeiture

8. The defendant property, approximately \$6,036.50 in United States currency, is subject to forfeiture to the United States of America under 21 U.S.C. § 881(a)(6) because it was used or intended to be used in exchange for controlled substances, represents proceeds of trafficking in controlled substances, or was used or intended to be used to facilitate a violation of 21 U.S.C. § 841(a)(1).

9. The defendant property, approximately \$16,699.00 in United States currency, is subject to forfeiture to the United States of America under 21 U.S.C. § 881(a)(6) because it was used or intended to be used in exchange for controlled substances, represents proceeds of trafficking in controlled substances, or was used or intended to be used to facilitate a violation of 21 U.S.C. § 841(a)(1).

Facts

10. Heroin is a Schedule I controlled substance under 21 U.S.C. § 812.
11. Marijuana is a Schedule I controlled substance under 21 U.S.C. § 812.
12. Cocaine is a Schedule II controlled substance under 21 U.S.C. § 812.
13. Fentanyl is a Schedule II controlled substance under 21 U.S.C. § 812.

November 8, 2018 traffic stop and arrest of Darius McElroy

14. On November 8, 2018, Milwaukee police officers conducted a traffic stop on a Honda minivan at or near 3300 South 27th Street, Milwaukee, Wisconsin, for traffic violations.
15. Darius McElroy was the driver and sole occupant of the Honda minivan.
16. When officers approached the driver's side window of the minivan and told McElroy to exit the vehicle, McElroy put the vehicle into drive and sped away.
17. A short time later, McElroy struck the curb near the southwest corner of South 24th Street at West Morgan Avenue.
18. McElroy exited the vehicle and fled on foot into an alley.
19. Officers pursued McElroy and took him into custody near 2305 West Morgan Avenue in Milwaukee.
20. At the time of his arrest, McElroy had the following on his person:
 - A. Approximately 10.92 grams of cocaine base, and
 - B. Approximately \$3,136.50 in United States currency.
21. Inside the minivan were the following:
 - A. Three cell phones on the floorboard.
 - B. A digital scale on the center console.
 - C. Approximately 29.26 grams of heroin and fentanyl in a cup holder on the center console.
 - D. Approximately \$2,900 in the center console.

E. A Visa debit card in the name of Darius McElroy.

22. Total money seized during the traffic stop is the defendant approximately \$6,036.50 in United States currency.

November 8, 2018 execution of a search warrant at the residence of Darius McElroy

23. On November 8, 2018, officers executed a search warrant at the residence of Darius McElroy, 3XXX S. 21st Street, Milwaukee, Wisconsin (“McElroy’s residence”).

24. No one was present during execution of the search warrant.

25. Below are some of the items that were inside McElroy’s residence on November 8, 2018.

A. In the living room:

- i. Approximately \$785 in a grocery bag on the couch, and
- ii. Approximately \$175 scattered about.

B. In a first floor bedroom, approximately \$272 on a shelf in the closet.

C. In a hallway cabinet, a Mason jar with cocaine salt residue.

D. In the kitchen, approximately 7.32 grams of marijuana.

E. In the three-season room:

- i. Approximately 12.94 grams of marijuana, and
- ii. A checked luggage tag in the name of Darius McElroy.

F. In a second floor bedroom:

- i. A money counter,
- ii. A bag of rubber bands,
- iii. A box of baggies,
- iv. A parking receipt showing the license plate number of Toyota Avalon,
- v. A loaded 40-caliber semi-automatic handgun,

- vi. Approximately \$179 scattered around,
- vii. Approximately \$13,020 rubber banded in \$1,000 bundles inside a red bag in a crawl space above the bedroom, and
- viii. Approximately \$1,970 rubber banded on a shelf.

G. In a 2007 Dodge Nitro parked in the driveway:

- i. Approximately \$298, and
- ii. A copy of McElroy's driver's license.

H. In a 2018 Dodge Challenger parked in the garage:

- i. A digital scale with white powdery residue, and
- ii. A Bill of Sale for the Dodge Challenger showing it was purchased by Darius McElroy.

26. Total money seized from McElroy's residence is the defendant approximately \$16,699.00 in United States currency.

November 8, 2018 mirandized recorded statement of Darius McElroy

27. On November 8, 2018, at approximately 4:54 p.m., officers conducted an interview of Darius McElroy (the "Interview").

28. The Interview was audio and video recorded.

29. Before conducting the Interview, an officer read Darius McElroy his Constitutional Miranda Rights. McElroy stated that he understood each of his rights and that he was willing to make a statement without a lawyer present.

30. During the Interview, Darius McElroy ("McElroy") admitted the following:

- A. McElroy had cocaine on his person when officers arrested him on November 8, 2018.
- B. McElroy sells cocaine.
- C. McElroy purchases about 14 grams of cocaine for \$550 every four or five days.

- D. McElroy was “fronted” the heroin and fentanyl that was in the Honda minivan on November 8, 2018.
- E. McElroy intended to sell the heroin and fentanyl.
- F. After selling the heroin and fentanyl, McElroy intended to pay back \$1,500 to his source for the “fronted” heroin and fentanyl.
- G. McElroy had about 15 grams of marijuana at his residence.
- H. McElroy smokes marijuana nearly every day.
- I. McElroy has been selling drugs for the past month or so from a Toyota Avalon, but McElroy sold that vehicle about one week ago. On November 8, 2018, McElroy was driving his girlfriend’s Honda minivan.

Cell phone data

31. Below are summarized portions of the CHAT data on Darius McElroy’s cell phone, number 414-552-0XXX (“McElroy’s phone”), which phone was in the Honda minivan that Darius McElroy was driving on November 8, 2018, before the traffic stop and as he fled from the scene of the traffic stop.

- A. Messages on August 30, September 1, September 27, October 5, October 27, and November 3, 2018, to and from phone number 414-208-8XXX and McElroy’s phone, setting up transactions in which McElroy sold controlled substances.
- B. Messages on August 31 and September 12, 2018, from phone number 262-269-9XXX to McElroy’s phone, asking to buy controlled substances from McElroy.
- C. Messages on September 1, 2018, to and from phone number 414-202-6XXX and McElroy’s phone, discussing McElroy picking up a controlled substance.
- D. Messages on September 2, 5, 7, 8, 10, 11, 16, 17, 20, 21, 24, 26, and 28, 2018; and October 1, 3, 4, 6, 7, 11, 12, 14, 15, 28, and 30, 2018, to and/or from phone number 414-234-2XXX and McElroy’s phone, setting up transactions in which McElroy sold controlled substances.
- E. Messages on October 10 and October 21, 2018, to and from phone number 262-441-9XXX and McElroy’s phone, discussing past transactions in

which McElroy sold controlled substances, and setting up a transaction in which McElroy sold a controlled substance.

F. Messages on October 18, 19, 22, 27, 28, 30, and 31, 2018; and November 1, 2, 3, 4, 5, 6, and 7, 2018, to and/or from phone number 414-484-6XXX and McElroy's phone, setting up transactions in which McElroy sold controlled substances.

Darius McElroy's State Drug Charges

32. On November 12, 2018, Darius McElroy was charged in Milwaukee County Circuit Court, Case No. 18CF5378, with (1) possession of narcotics with intent to deliver, (2) possession of cocaine with intent to deliver, and (3) attempting to flee or elude an officer.

33. A plea hearing in Case No. 18CF5378 is scheduled for April 1, 2019.

Warrant for Arrest In Rem

34. Upon the filing of this complaint, the plaintiff requests that the Court issue an arrest warrant *in rem* pursuant to Supplemental Rule G(3)(b), which the plaintiff will execute upon the defendant properties pursuant to 28 U.S.C. § 1355(d) and Supplemental Rule G(3)(c).

Claims for Relief

35. The plaintiff alleges and incorporates by reference the paragraphs above.

36. By the foregoing and other acts, the defendant property, approximately \$6,036.50 in United States currency, was used or intended to be used in exchange for controlled substances, represents proceeds of trafficking in controlled substances, or was used or intended to be used to facilitate a violation of 21 U.S.C. § 841(a)(1).

37. The defendant approximately \$6,036.50 in United States currency is therefore subject to forfeiture to the United States of America under 21 U.S.C. § 881(a)(6).

38. By the foregoing and other acts, the defendant property, approximately \$16,699.00 in United States currency, was used or intended to be used in exchange for controlled

substances, represents proceeds of trafficking in controlled substances, or was used or intended to be used to facilitate a violation of 21 U.S.C. § 841(a)(1).

39. The defendant approximately \$16,699.00 in United States currency is therefore subject to forfeiture to the United States of America under 21 U.S.C. § 881(a)(6).

WHEREFORE, the United States of America prays that a warrant of arrest for the defendant properties be issued; that due notice be given to all interested parties to appear and show cause why the forfeiture should not be decreed; that judgment declare the defendant properties to be condemned and forfeited to the United States of America for disposition according to law; and that the United States of America be granted such other and further relief as this Court may deem just and equitable, together with the costs and disbursements of this action.

Dated at Milwaukee, Wisconsin, this 1st day of March, 2019.

Respectfully submitted,

MATTHEW D. KRUEGER
United States Attorney

By: s/SCOTT J. CAMPBELL
SCOTT J. CAMPBELL
Assistant United States Attorney
Scott J. Campbell Bar Number: 1017721
Attorney for Plaintiff
Office of the United States Attorney
Eastern District of Wisconsin
517 East Wisconsin Avenue, Room 530
Milwaukee, Wisconsin 53202
Telephone: (414) 297-1700
Fax: (414) 297-1738
E-Mail: scott.campbell@usdoj.gov

Verification

I, Vincent Lopez, hereby verify and declare under penalty of perjury that I am a Task Force Officer with the Drug Enforcement Administration (DEA) in Milwaukee, that I have read the foregoing Verified Complaint for Civil Forfeiture *in rem* and know the contents thereof, and that the factual matters contained in paragraphs 10 through 31 of the Verified Complaint are true to my own knowledge.

The sources of my knowledge and information are the official files and records of the United States, information supplied to me by other law enforcement officers, as well as my investigation of this case, together with others, as a Task Force Officer with DEA.

I hereby verify and declare under penalty of perjury that the foregoing is true and correct.

Date: 3/1/19

s/VINCENT LOPEZ
Vincent Lopez
Task Force Officer

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Place an "X" in the appropriate box: Green Bay Division Milwaukee Division

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott J. Campbell, AUSA
US Attorney's Office, #530 Federal Building
517 E. Wisconsin Avenue, Milwaukee, WI 53202 (414-297-1700)

DEFENDANTS

APPROXIMATELY \$6,036.50 IN UNITED STATES CURRENCY,
ET AL.County of Residence of First Listed Defendant Milwaukee

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Fraud	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 391 Truth in Lending	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 392 Other Personal Product Liability	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
			<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	Habeas Corpus:	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
21 USC § 881(a)(6)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/01/2019

s/SCOTT J. CAMPBELL

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING

JUDGE

MAG. JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
AT LAW AND IN ADMIRALTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No.

APPROXIMATELY \$6,036.50 IN UNITED
STATES CURRENCY, and

APPROXIMATELY \$16,699.00 IN UNITED
STATES CURRENCY,

Defendants.

WARRANT FOR ARREST IN REM

To: THE UNITED STATES MARSHAL
Eastern District of Wisconsin

WHEREAS, a Verified Complaint for Civil Forfeiture *in rem* was filed on the 1st day of March, 2019, by the United States Attorney for the Eastern District of Wisconsin, which seeks the forfeiture of the above-named defendant properties pursuant to Title 21, United States Code, Section 881(a)(6), and which prays that process issue to enforce the forfeiture and to give notice to all interested parties to appear before the court and show cause why the forfeiture should not be decreed; and due proceedings being had, that the defendant properties be condemned and forfeited to the use of the United States of America.

YOU ARE THEREFORE HEREBY COMMANDED to attach and arrest the following defendant properties, which are presently in the custody of the High Intensity Drug Trafficking

Area in Milwaukee, Wisconsin, in the Eastern District of Wisconsin, and to detain the same until further order of this Court:

- A. Approximately \$6,036.50 in United States currency, which was seized on or about November 8, 2018, from Darius McElroy at or near South 24th Street and West Morgan Avenue, Milwaukee, Wisconsin, and
- B. Approximately \$16,699.00 in United States currency, which was seized on or about November 8, 2018, from Darius McElroy at 3XXX South 21st Street, Milwaukee, Wisconsin.

Dated this _____ day of _____, 2019, at Milwaukee, Wisconsin.

STEPHEN C. DRIES
Clerk of Court

By:

Deputy Clerk

Return

This warrant was received and executed with the arrest of the above-named defendants.

Date warrant received: _____

Date warrant executed: _____

Name and title of arresting officer: _____

Signature of arresting officer: _____

Date: _____